THE GERMAN COURTS FOR THE ARBITRATION OF INDUSTRIAL DISPUTES

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During the summer of 1908 I was making investigations in Berlin on German labor laws and labor conditions as Special Labor Commissioner for California. In the course of an interview with His Excellency Herr Delbruck, German Minister of Commerce, I invited his opinion on compulsory arbitration. His reply was to the effect that the German government does not favor compulsory arbitration for fear that it might find itself unable to enforce the decisions of its industrial courts and that a failure to do so would bring the administration into contempt.

The German authorities are exceedingly slow about exercising any compulsion in the settlement of labor disputes. The relations between organized labor and the German federal administration at best are strained and more or less unfriendly. This is largely due to the fact that the trade unions and the social democratic party in Germany consist practically of the same membership.

Politically the government and the social democratic party have little in common and, as a rule, are found in the attitude of bitter political opponents. The frequent instances of political warfare between them have led to strained relations and to each regarding the other with suspicion and with more or less hostility. Organized labor in Germany now embraces a membership of about two millions and is steadily growing. In 1907 the Social Democrats cast 3,259,000 votes, elected to the Lower House 43 out of 397 members, had 2,000 mayors and other executive or administrative officials in the Empire, and published 158 journals and periodicals.

His growing strength has won for the German wage earner, his trade union and his political party, the wholesome respect, if not the fear, of those in power. The German government, therefore, is very loth to attempt to pass legislation along the lines of compulsory settlement of labor disputes, which in all likelihood would

be regarded as a governmental effort to curb the liberties and the freedom of action of the worker. The government, however, has taken progressive measures along the lines of encouraging conciliation and voluntary arbitration. The first attempts in this direction were made in 1890 when legislation was passed regulating the industrial courts. There had existed in various parts of Germany, for nearly seventy years, various courts dealing with arbitration or concilation for collective disputes. This, however, resulted in great diversity of form and procedure in the courts, causing considerable dissatisfaction, and finally led to the adoption of the law of 1890 which provided for a uniform regulation.

The tribunals as since constituted are composed of an equal number of workers and employers. The local authorities appoint in addition a president and a deputy. The chief function of these tribunals is, upon complaint of either party, to adjust individual disputes. Their jurisdiction extends only to those employed in factories. A further provision of the law of 1890 specifies that[1]

> Courts may act as conciliation bureaus in case of disputes concerning the terms of continuation or renewal of the labor contracts (Art. 61), but only on condition that both parties request such action and, where they number more than three, and appoint delegates to the hearing. Such delegates must be twenty-five years of age and in the enjoyment of full legal rights. The Conciliation Bureau consists of the president of the court and at least four members, two employers and two workingmen, but there may be added, and must be when the delegates of the two parties so request, representatives in equal numbers named by the employers and employees. Both these representatives and the members of the bureau must not be concerned in the dispute in question.
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> The first step in the procedure is a determination of the facts by hearing the delegates from each side and the examination of witnesses, the bureau having power to summon and examine witnesses, though no penalty is provided to compel their presence. Following this each side must formulate in conference its opinion upon the allegations made by the other party and the witnesses, and then an effort at conciliation is to be made. If this succeeds, the agreement signed by the bureau and the delegates is to be published. If not, the court is to render a decision by a majority vote, though in the case of a tie the president may decline to vote and declare that no decision could be rendered. When a decision has been given, the delegates must declare within a specified time either acceptance or rejection thereof;

[1] "Report of French Bureau of Labor." De la Conciliation et de l'Arbitrage dans les Conflicts Collective entre Patrons et Ouvriers en France et à l'Etranger, 1893, p. 476. See Bulletin No. 60, Sept., 1905, Department of Commerce and Labor, Washington, D. C.

failure to make declaration to be taken as refusal. At the end of the time allowed the bureau is to publish the decision. It will be seen that everything in the proceeding is absolutely voluntary for the parties in dispute.

Organized labor in Germany has for years been battling for recognition at the hands of the employer. Thus far, as pointed out in my report to Governor Gillett on strikes and lockouts in foreign countries, January, 1910, aside from the printing, book binding and building trades, it has not been successful in obtaining the desired recognition excepting in the case of some of the smaller employers. The great German employers of labor, including the employers in the metal and the textile industries, have steadily and persistently refused to deal with or to recognize labor unions. Employers in these industries, with three million wage earners on their collective pay rolls, are strongly organized and in a most determined manner refuse to treat with or to acknowledge the existence of labor organizations or their representatives. The employers contend that union workers, as a rule, are also members of the social democratic party, which has persistently and needlessly antagonized capital and capitalists by violently denouncing both, and that so long as this policy on the part of organized labor maintains, employers will refuse to recognize trade unions.

Exceptional cases will be found where large employers will recognize unions composed, however, exclusively of their own workmen. For example, Messrs. D. Peters & Co., of Elberfeld, manufacturers of woolen and cotton stuffs, have a council composed of nine employees, four of whom are nominated by the employers and five are elected by the workmen, with a member of the firm as president, who, however, has no vote. All differences arising in relation to hours of labor, or wages, are referred to this council, whose decisions have ever been accepted by both parties. This plan seems to have worked to the satisfaction of all concerned.

The state has thus far refrained from even attempting to exercise any coercion in forcing settlements in labor disputes. It is a strong believer, however, in the exercise of conciliatory measures. With this end in view a law was enacted creating what has since become known as the arbitration courts for trade disputes. There are between four hundred and four hundred and fifty such courts in Germany. The court in Berlin, for example, has eight depart-

ments, with a judge for each department. These courts have three separate and distinct functions:

(*a*) To decide disputes between individual workmen and their employers.

(*b*) To conciliate in disputes between bodies of workers and their employers.

(*c*) To give expert information and opinions in reference to trade questions to legislators and to state executives.

Under the law the court awaits the registering of a complaint by either party. It also has the power, however, to take the initiative and to summon both parties to a hearing, subject to a fine of twenty-five dollars for failure to respond to such summons. There is no penalty for either side refusing to answer questions put by the court or for refusing to enter into negotiations with the other party, even at the instance of the court.

The theory of the German law is that one-half the battle in a labor dispute is won in the direction of peace if both parties can be brought together by a third party, who in this instance is the court, which is disinterested and in whom both sides can place confidence. I was informed by Herr Gustav Melisch, Chief Secretary of the Industrial Court of Berlin, that seventy per cent of the disputes are submitted to this court, and that as a rule the decisions rendered are accepted, although under the law there is no obligation to do so; most cases are settled by compromises effected between the parties in dispute, while the case is in course of investigation and prior to the court decision.

It is well to bear in mind, however, that, as a rule, the cases dealt with by the industrial courts are confined to those arising between the smaller employers and their workers. As previously explained, the large employers will in no wise recognize unionized labor, or the industrial courts, except to respond to the legal summons and then to decline answering questions which under the law they may legally do, and the power of the court is at an end. An exceptional case occurred in the summer of 1908. A national strike in the building trades was threatened throughout the Empire. Through the efforts of the industrial court a hearing was held at which representative building contractors and wage earners from various parts of Germany were present. The conference continued for many days, and finally, through the good offices of the court,

mutual concessions were made and an agreement for an extended period was entered into which insured industrial peace in the building trades until this present season. Seemingly, it has been impossible for the industrial court to repeat its successful effort, as the press has been publishing recent accounts of the general building strike now on throughout Germany.

When I was last in Germany, His Excellency Herr Delbruck, the Minister of Commerce, stated that the draft of a law was then under consideration regarding so-called "Chambers of Labor." These chambers of labor are to serve as courts of arbitration wherever special arbitration courts for trade disputes do not exist, or if the employer and employees are engaged in the districts of several existing arbitration courts, or if no agreement can be reached concerning a dispute in the ordinary court for trade disputes. The composition of the proposed labor councils, their functions and powers, had at that time not yet been fully determined upon, beyond the general idea that they are to be composed partly of employers and partly of employees. At this writing I am unable to learn whether this proposed measure has been enacted.

The wonder is not that so little has been achieved by the German industrial courts, but that in view of the very limited powers granted these tribunals, that so much has been accomplished. It can easily be understood that a fine of $25.00 for failure to respond to a court summons can have very little terror for a great corporation about to lock out its men, nor is this trifling amount likely to have a deterrent effect on a powerful labor union that has voted to go on strike, and that believes it can get better results from a strike than through conciliation.

The industrial court serves very useful purposes where both parties to a labor dispute are ripe for a conference, but hesitate to take the initiative for fear of its being mistaken by the other side as a sign of weakness. The intervention of the court releases both sides of this responsibility, and paves the way without prejudice for a "get together" conference. Yet another helpful feature in the German industrial court system is the practice often followed during the course of public negotiations, by the assistant judges, of discussing the points at issue separately and privately with the parties to the dispute, frequently bringing about in this manner compromises and agreements.

In the matter of dealing with labor disputes Germany seems to be to-day where England was several decades ago. The attitude toward organized labor on the part of English employers, as a rule, is in marked contrast to that of the German employer. The English employer has long since discovered the wisdom and expediency of recognizing and dealing with organized labor, and his policy has made for a much higher degree of industrial peace. This fact is emphasized by comparing England's record of strikes in recent years with that of Germany. Owing to the difference in method followed by these two countries in keeping their strike records, an exact comparison is not possible, but the following figures are sufficient to indicate that the policy pursued by English employers is making for industrial peace, whilst that followed by German employers in refusing to recognize or to deal with organized labor is making for increasing industrial war.

The following figures are taken from the English government report of 1907 on strikes and lockouts:

Year.	No. of disputes.	Work people involved.	Duration of working days lost.
1897	864	230,267	10,345,523
1907	601	147,498	2,162,151

It will be noted that during the intervening ten years for which the figures are given, the number of disputes has diminished by 34.40 per cent, the number of workmen involved has been decreased by 36.03 per cent, and the number of working days lost, which after all is the correct unit to be considered, has been reduced by 79.10 per cent. To the best of my knowledge this is the most remarkable showing of any industrial country in Europe.

Compare the foregoing record of England with the following figures taken from Bulletin 86, page 243, January, 1910, issued by the Department of Commerce and Labor at Washington, D. C., and it will be seen that German employers have paid a heavy cost for their unwillingness to recognize or to deal with organized labor:

Strikes in Germany

Year.	Strikes.	Establishments affected.	Strikers.
1899	1,288	7,121	99,338
1907	2,266	13,092	192,430

In the nine years for which comparative figures are here given, the number of strikes in Germany has increased over 75 per cent, the number of establishments affected has increased over 83 per cent, and the number of strikers has increased over 93 per cent —a sad commentary upon the policy pursued by the German employer. Nor is the end yet in sight. Despite the attitude of German employers, organized labor in Germany has gone forward in recent years with rapid strides and is destined to a continued growth. The persistent and steady refusal on the part of German employers to deal with labor unions inevitably must still further widen the gap and increase the existing bitterness between wage payers and wage getters, with heavily added cost, if not with ultimate disaster to both.

It might be assumed from the foregoing statement that I was either a trade unionist or that I held a brief for organized labor. It happens that neither is the case. I am and have been for over thirty years a large employer of labor. I am not writing this, however, as an employer, nor from the employer's standpoint. I am writing purely as an investigator and as a chronicler of authenticated facts. As one who has had the rare opportunity of officially investigating the labor laws and labor conditions not only of Germany but also of the leading industrial countries of the world, I would be blind indeed or stupidly prejudiced against trades unions did I not see with perfect clearness that organized labor has come to stay, and that so long as the wage system prevails unionism is destined to be a permanent and growing institution of modern industrialism. Moreover, no fair-minded investigator who has noted the work achieved by trade unionism in the interest of the wage earner and his dependents can help but feel that for trade unionism to fail, is to mean for the worker a backward step that in the end would force his return to the wretched condition of his forbears.

The only protection the worker can hope for in these days of gigantic industrial organization is that which comes to him from solidarity and collective bargaining. That industrial nation then, all other things being equal, is likely to enjoy the highest degree of industrial peace and to make the greatest industrial progress, whose employers, great and small, in common with the employers of England, are wise enough to take conditions, not as they would like

to have them, but as they are, and deal with these conditions accordingly.

The employers of Germany can no more hope to destroy trade unionism by refusing to recognize it, than can the ostrich get rid of his pursuer by hiding his head in the sand. Sooner or later German employers, in common with employers in most other growing industrial countries, will see the wisdom of recognizing organized labor. They will see the wisdom of inviting the State to intervene in disputes that cannot in any other way be settled. They will see the wisdom of having the State assume the part of public inquirer, investigator and conciliator, not, as now in Germany, with little or no power at its command, but with the fullest right to summon witnesses, place them under oath, examine books and documents, and do all other things that may enable it to reach the facts involved in the industrial controversy, so that through published statements issued as the result of such public inquiry, public opinion may be enlisted to cast its weight and its influence against the side in an industrial dispute which may assume an unfair or an unreasonable attitude.